4671

SUPREME COURT OF THE UNITED STATES.

No. 164.

JOHN BACON, ALEXANDER SIMINGTON, AND THOMAS ROBINS, PLAINTIFFS IN ERROR,

vs.

JAMES ANDREWS.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Writ of summons and marshal's return	1	1
Declaration	2	2
Amendment to declaration	4	3
Defendant's pleas	6	4
Demurrer to defendant's pleas	7	5
Joinder in demurrer	7	5
Judgment	8	5
Bond to prosecute writ of error	8	5
Clerk's certificate	10	6
Writ of error	11	7
Citation and service	12	7

[GIDEON, Print.]

JOHN BACON et al.
vs.
JAMES ANDREWS.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the May term, in the year of our Lord one thousand eight hundred and fifty.

Be it remembered, that heretofore, to wit, on the 30th day of September, A. D. 1848, the following writ of summons ad respondendum, issued out of the clerk's office of the court aforesaid, in the words and figures to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, ss.

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, without delay, to summon James Andrews, a citizen of the State of Mississippi, that he be and appear at the circuit court of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to John Bacon, Alexander Simington, and Thos. Robins, citizens of the State of Pennsylvania, of a plea of trespass on the case to their damage [of] four thousand dollars; and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default. And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 30th day of Septem-
[L. S.] ber, A. D. 1848, and in the 73d year of the independence of the United States of America.

W. H. BROWN,
Clerk,
Per CHS. H. ROGERS,
Deputy clerk.

Marshal's return.

Executed October 1st, 1848.

THOS. FLETCHER,
Marshal,
By P. FLETCHER,
Deputy marshal.

And on the same day of suing out the writ aforesaid the said plain-

tiffs, by G. S. Yerger, their attorney, filed their declaration herein against the said defendant, in the words and figures following, to wit:

Circuit court of the United States, for the southern district of Mississippi. November term, A. D. 1848.

John Bacon, Alexander Simington, and Thomas Robbins, citizens of the State of Pennsylvania, complain, by attorney, of James Andrews, a citizen of the State of Mississippi, in a plea of trespass on the case.

For that whereas heretofore, to wit, on the 30th June, A. D. 1840, to wit, at Rodney, in the district aforesaid, the said defendant, Andrews, together with one W. Briscoe, executed their promissory note, payable on the first day of January, 1842, by which they, or either of them, promised to pay John A. Watkins, or order, the sum of three thousand seven hundred and forty $\frac{4}{100}$ dollars, for value received, payable and negotiable at the office of the Planter's Bank of Mississippi, at Port Gibson; which note the said Jno. A. Watkins afterwards, to wit, on the day of , in the district aforesaid, endorsed and delivered to plaintiffs.

And the said plaintiffs further aver, that, after said endorsement to them aforesaid, the said defendant, on the 1st day of June, 1842, in the district aforesaid, in consideration that the said plaintiffs would, at the special instance and request of the said defendant, Andrews, forbear to sue the said Andrews for the recovery of said sum of money in said note mentioned, he, the said Andrews, afterwards, to wit, on the day and year last aforesaid, in the district aforesaid, agreed, and then and there promised and undertook, that he would pay, and then and there faithfully promised the said plaintiffs to pay, them the said sum of money in said note mentioned, in the notes of the president, directors, and company of the Bank of the United States, (a banking institution incorporated by the legislature of Pennsylvania.) And the said plaintiffs aver, that they, confiding in the said promise and undertaking of the said defendant so by him made in manner and form aforesaid, did forbear, and form thence hitherto have forborne, to sue the said defendant for the recovery of the said sum of money first above mentioned, by means whereof, and of his promise and undertaking aforesaid, he, the said Andrews, became liable to pay to the said plaintiffs the said sum of money in the notes of said Bank of the United States last mentioned. And plaintiffs aver, that the said defendant, although often requested, has not paid said sum, or any part thereof, in the notes of the said Bank of the United States, or in any way whatever.

And whereas the said defendant, on the 1st day of January, 1844, at Rodney, in the district aforesaid, was indebted to said plaintiffs in the sum of three thousand seven hundred and fifty $\frac{4}{100}$ dollars, for money by the said plaintiffs before that time lent and advanced to said defendant, and paid, laid out, and expended for the said defendant, and at his special instance and request; and being so indebted the said defendant, in consideration thereof, afterwards, to

wit, on the day and year last aforesaid, in the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said several sums of money in said this count mentioned, when the said defendant should be thereunto requested.

Nevertheless the said defendant has not yet paid the several sums of money above mentioned, or any part thereof, to the said plaintiffs, although often requested; but to pay the same the said defendant has hitherto wholly failed and refused, and still fails and refuses, to the damage of said plaintiffs of four thousand dollars.

GEO. S. YERGER,
For plaintiffs.

(*Copy of note sued on.*)

$3,740 59. RODNEY, *June* 30, 1840.

On the first day of January, eighteen hundred and forty-two, we, or either of us, promise to pay to the order of John A. Watkins, without plea or offset, three thousand seven hundred and forty dollars and fifty-nine cents, for value received; negotiable and payable at the office of the Planters' Bank of Mississippi, at Port Gibson.

JAMES ANDREWS,
W. BRISCOE.

[Endorsed:] Pay John Bacon, Alex. Simington, and Thos. Robins, for value received.

JNO. A. WATKINS,
B. CAMPBELL.

And afterwards, to wit, on the 8th day of May, A. D. 1849, the following amendment was made and filed to the original declaration herein, as per agreement of attorneys filed, in the words and figures, to wit:

Circuit court of the United States, for the southern district of the State of Mississippi, May term, 1849.

And whereas also heretofore, to wit, on the 30th June, 1840, to wit, at Rodney, in the district aforesaid, the said defendant, Andrews, together with one W. Briscoe, executed their certain other promissory note, payable on the first day of January, 1842, by which they, or either of them, promised to pay John A. Watkins, or order, the sum of three thousand seven hundred and forty $\frac{59}{100}$ dollars, for value received; payable and negotiable at the office of the Planters' Bank of Mississippi, at Port Gibson; which note the said John A. Wilkins afterwards, to wit, on the day and year aforesaid, endorsed to the said plaintiffs.

And the said plaintiffs aver, that, after said defendant, on the 1st day of February, 1842, in the district aforesaid, in consideration that the said plaintiffs would, at the special instance and request of the said

defendant, Andrews, forbear and give time to said Andrews until February, 1844, to pay the money mentioned in said note, he, the said Andrews, afterwards, to wit, on the day and year aforesaid, in the district aforesaid, agreed, and then and there promised and undertook, that he would pay, and then and there faithfully promised the said plaintiffs to pay, them in the month of February, 1844, the said sum of money in said note mentioned, in the notes of the president, directors, and company of the Bank of the United States, (a banking institution incorporated by the legislature of Pennsylvania.) And the said plaintiffs aver, that they, confiding in said promise and undertaking of the said defendant, so by him made in manner and form aforesaid, did forbear until said 1st February, 1844, and from thence hitherto have forborne, to sue the said defendant, and did give time to said defendant until 1st February, 1844, to pay said sum of money in said note mentioned, in the notes of the said president, directors, and company of the Bank of the United States; by means whereof, and by force of his undertaking aforesaid, he, the said Andrews, became liable to pay to the said plaintiff the said sum of money in the notes of the said president, directors, and company of the Bank of the United States.

And the plaintiffs aver, that the said defendant, although of[ten] requested, has not performed his said promise or agreement, or paid said sum of money in the notes of the president, directors, and company of the Bank of the United States, or any part thereof, in the month of January, 1844, or at any other time, but so to do has hitherto wholly neglected and refused, and still refuses, to plaintiffs' damage four thousand dollars.

G. S. YERGER, *for plaintiffs.*

It is agreed this may be filed as an amended count to the declaration.

GEO. S. YERGER, *P. Q.*
H. T. ELLETT, *for defendant.*

(1.) And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner as the said plaintiffs have above thereof complained against him; and of this he puts himself upon the country, &c.

ELLETT, *Attorney.*

And plaintiffs likewise.

GEO. S. YERGER, *P. Q.*

(2.) And for further plea in this behalf the said defendant, by leave, &c., says actio non, &c., because he says that he, the said defendant, did not, at any time within three years next before the commencement of this suit, undertake or promise in manner or form as the said plaintiffs have thereof complained against him, and this he is ready to verify, &c.; wherefore he prays judgment, &c.

(3.) And for further [plea] in this behalf the said defendant, by leave, &c., says actio non, &c., because he says, that the said several

supposed causes of action in the said plaintiffs' declaration mentioned, did not, nor did either or any of them, accrue to said plaintiffs at any time within three years next before the commencement of this suit, to wit, at the district aforesaid, and this the said defendant is ready to verify; wherefore he prays judgment, &c.

H. T. ELLETT, *Attorney for deft.*

And the said plaintiffs, by their attorney, come, say precludi non, &c., because they say that the matters and things set forth and alleged in defendant's plea secondly above pleaded are not sufficient in law to preclude the said plaintiffs from having and maintaining their action aforesaid; wherefore they pray judgment, &c.

GEO. S. YERGER, *Attorney.*

And as to the plea of the said defendant thirdly above pleaded, the said plaintiffs say precludi non, &c., because they say the matters and things set forth and alleged in said plea are not sufficient in law to preclude the said plaintiffs from having and maintaining their action against said defendant; wherefore they pray judgment, &c.

G. S. YERGER, *Attorney.*

And the said defendant says that his said second and third pleas are good and sufficient in law to preclude the said plaintiffs from having or maintaining their aforesaid action against the said defendant; wherefore, inasmuch, &c., the said defendant prays judgment, &c.

H. T. ELLETT, *Attorney.*

And afterwards, to wit, at the said May term of the court first aforesaid, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and fifty, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys. And the plaintiffs' demurrer to the plea of the defendant secondly and thirdly above pleaded being fully argued and heard, and now understood by the court, it is ordered by the court that the said demurrers be overruled.

Therefore it is ordered by the court, that the said plaintiffs take nothing by their said bill, but for their false clamor be in mercy, &c.; and that the said defendant go thereof hence without day, and recover of the said plaintiffs his costs and charges by him about his defence in this behalf expended.

From which judgment the plaintiffs pray a writ of error to the Supreme Court of the United States, which is granted, upon their executing bond according to law in a penalty of five hundred dollars.

(*Copy of Bond.*)

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, John Bacon, Alexander

Simington, Thomas Robins, and George S. Yerger, are held and firmly bound unto James Andrews in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the said James Andrews, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 14th day of May, A. D. one thousand eight hundred and fifty.

The condition of this obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A. D. 1850, judgment was rendered by said court in favor of the said James Andrews against the said John Bacon, Alexander Simington, and Thomas Robbins for costs of suit, and the said John Bacon, Alexander Simington, and Thomas Robins have sued out a writ of error from the Supreme Court of the United States to reverse said judgment:

Now, if the said John Bacon, Alexander Simington, and Thomas Robins shall prosecute *his* said writ of error to effect, and shall well and truly pay and satisfy the amount of all such costs as the said Supreme Court of the United States shall adjudge in the premises, if they, the said John Bacon, Alexander Simington, and Thomas Robins shall fail to make their plea good, then, and in that case, this obligation to be void; otherwise to remain in full force and virtue.

JOHN BACON, [SEAL.]
ALEXANDER SIMINGTON, [SEAL.]
And THOMAS ROBINS, [SEAL.]
By their attorney in fact,
J. L. ROBERTS,
GEO. S. YERGER, [SEAL.]
By F. ANDERSON.

Sealed and delivered in the presence of—
ALEX. C. FERGUSON.

I acknowledge the authority of F. Anderson to have executed the within bond for me; I acknowledge it as my bond.
Witness my hand and seal. GEO. S. YERGER. [SEAL.]

I approve of the within and foregoing bond and security.
Given under my hand this 22d day of May, 1850.
S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.

UNITED STATES OF AMERICA,
Southern district of Mississippi.
Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify,

that the foregoing nine pages contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, this first day of April, A. D. s[EAL.] 1851, and of the independence of the United States of America the 75th.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John Bacon, Alexander Simington, and Thomas Robins, plaintiffs, and James Andrews, defendant, a manifest error hath happened, to the great damage of the said John Bacon, Alexander Simington, and Thomas Robins, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the 1st Monday of December, in the year of our [SEAL.] Lord one thousand eight hundred and fifty, and of the independence of the United States the 75th.

Issued 1st day of April, A. D. 1851.

W. H. BROWN,

Clerk, circuit court, U. S., southern district of Mississippi.

UNITED STATES OF AMERICA, *ss:*

To James Andrews, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the ninth circuit and southern district of Mississippi, wherein John Bacon, Alexander Simington, and Thomas Robins are plaintiffs, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of

error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this 1st day of April, in the year of our Lord one thousand eight hundred and fifty-one, and in the 75th year of the independence of the United States.

S. J. GHOLSON.

I nominate and appoint Charles H. Forman my special deputy to execute and return this process, 1st April, 1851.

FIELDING DAVIS, [SEAL.]
Mar. S. dist., Miss.

Executed on James Andrews, April 21st, 1851.

F. DAVIS,
U. S. marshal, S. D. Miss.,
By C. H. FORMAN,
Special dep. mar.

Mileage - - - - -	$12 00
Service - - - - -	2 00
Copy - - - - -	50
Execution and return - - -	50
	$15 00

Received costs on this citation 7th May, 1851.

FIELDING DAVIS, *Mar.*,
By R. FLETCHER, *D. M.*

4876.

SUPREME COURT OF THE UNITED STATES.

No. 165.

JOHN NORRIS, PLAINTIFF,

vs.

EDWIN B. CROCKER AND ELISHA EGBERT.

ON A CERTIFICATE OF DIVISION BETWEEN THE JUDGES OF THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF INDIANA.

Be it remembered, that among the records of the circuit court of the United States, for the seventh judicial circuit and district of Indiana, is found the following, to wit:

JOHN NORRIS
vs.
EDWIN B. CROCKER and Elisha Egbert. } *Debt.*

Come now on this day the parties, by counsel, and file the following paper in open court, to wit, in these words, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

At a circuit court of the United States, begun and holden at Indianapolis, for the district of Indiana, on Monday, the nineteenth day of May, in the year one thousand eight hundred and fifty-one, and continued from day to day until Friday, the thirtieth day of May, one thousand eight hundred and fifty-one.

JOHN NORRIS
vs.
EDWIN B. CROCKER and Elisha Egbert. }

Present, honorable John McLean and the honorable Elisha M. Huntington, judges.

This is an action of debt brought to recover the penalty of five hun-